



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-809

CERTAIN DEVICES FOR MOBILE DATA COMMUNICATION

DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION GRANTING A MOTION BY COMPLAINANT TO TERMINATE THE INVESTIGATION IN ITS ENTIRETY BASED UPON WITHDRAWAL OF THE COMPLAINT; TERMINATION OF THE INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 60) of the presiding administrative law judge (“ALJ”) granting a motion by complainant to terminate the investigation in its entirety based upon withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket

(EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 13, 2011, based on a complaint filed by Openwave Systems Inc. of Redwood City, California ("Openwave"). 76 *Fed. Reg.* 63657-58 (Oct. 13, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for mobile data communication by reason of infringement of certain claims of United States Patent Nos. 6,233,608; 6,289,212; 6,405,037; 6,430,409; and 6,625,447. The notice of investigation named Research In Motion Ltd. of Ontario, Canada; Research In Motion Corp. of Irving, Texas; and Apple Inc. of Cupertino, California as respondents. During pendency of the investigation, Openwave changed its name to Unwired Planet, Inc.

On October 12, 2012, Openwave filed an unopposed motion to terminate the investigation in its entirety based upon withdrawal of the complaint. No responses to the motion were filed.

That same day, the ALJ issued the subject ID (Order No. 60) terminating the investigation. The ALJ found that the motion complied with the requirements of Commission Rule 210.21(a) (19 C.F.R. § 210.21(a)) and that no extraordinary circumstances prohibited granting the motion. None of the parties petitioned for review of the ID. The Commission has determined not to review the ID.

The Commission notes that in Order No. 57 the ALJ denied a request by the parties to terminate the investigation prior to the evidentiary hearing based upon Openwave's stipulation that, under the ALJ's claim construction, the accused products do not infringe the asserted claims. The Commission clarifies that it encourages early disposition of investigations on dispositive issues, when possible, before the evidentiary hearing in the interest of mitigating litigation costs and conserving resources of the parties and the Commission. *See, e.g., Certain Drill Bits and Products Containing the Same*, Inv. No. 337-TA-844, 77 *Fed. Reg.* 51825-26 (Aug. 27, 2012) (affirming grant of summary determination of no importation on the merits and terminating investigation).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: November 13, 2012

[FR Doc. 2012-27989 Filed 11/16/2012 at 8:45 am; Publication Date: 11/19/2012]